

Aviation Drug/Alcohol Abatement **Update**

JUNE 1995

NO. 95-1

FAA Alcohol Rule Video Available
see page 7

ANTIDRUG PROGRAM

RANDOM TESTING RATE LOWERED FOR 1995

The aviation industry positive rates for 1992 and 1993 were less than 1 percent (0.78 percent and 0.82 percent, respectively). Therefore, the aviation industry's required random testing rate for calendar year 1995 has been lowered to 25 percent. (See following article.)

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RANDOM TESTING REQUIREMENTS AMENDED

On December 2, 1994, the Federal Aviation Administration (FAA) published a final rule

revising the random drug testing requirements.

Random Testing Rate

The rule provides for adjustment to the minimum annual random drug testing rate based on the annual *positive rate* of the aviation industry.

Positive rate means the number of positive results for random drug tests conducted under the FAA rule plus the number of refusals to take random tests required under the FAA rule, divided by the total number of random drug tests conducted under the FAA rule plus the number of refusals to take random tests required under the FAA rule.

Refusal to submit means that an individual failed to provide a urine sample as required by 49 CFR part 40, without a genuine inability to provide a specimen (as determined by a medical

evaluation), after he or she has received notice of the requirement to be tested in accordance with the FAA rule, appendix I, or engaged in conduct that clearly obstructed the testing process.

NOTE: If a specimen is reported as adulterated by the laboratory, the employee is considered to have refused to submit to testing because the adulteration constitutes an obstruction of the testing process. Therefore, refusals arising from adulterated specimens are included in the calculation of the positive rate. (See Q and A for additional guidance)

Canceled tests resulting from administrative or procedural errors during the testing process are not counted in the totals when calculating the positive rate.

The minimum annual percentage rate for random testing is set separately for each Department of Transportation (DOT) regulated industry. The rate will be determined based on the annual Management Information System Data Collection Forms submitted by employers. Any random testing rate adjustments will occur on January 1 and notice of the adjustment will be published in the Federal Register in the preceding year.

If the *positive rate* for the aviation industry is **below 1%** for 2 consecutive years, the annual testing rate may be lowered to **25%**.

If the *positive rate* for the aviation industry in a given year is **equal to or greater than 1%**, the annual testing rate will be **50%**.

Random Testing Rate: Dual Covered Employees

If an employee is affected by the provisions of the FAA's and another DOT agency's antidrug rule due to multiple functions (e.g., aviation mechanic and commercial motor vehicle driver) performed by the employee, the employee must be subject to random drug testing at the percentage rate established for the DOT agency regulating more than 50 percent of the employee's function.

Random Testing Under More Than One DOT Agency Rule

The FAA will now permit aviation employers to include employees covered under other DOT agency rules with aviation employees in a single random pool. In the past the FAA did not permit a "mixed" random testing program.

If an employer is required to conduct random testing under the drug testing rules of more than one DOT agency, the employer may:

1. Establish separate pools, with each pool containing covered employees who are subject to testing at the same rate; or
2. Establish one pool with covered employees subject to random testing at the highest percentage rate established by any DOT agency to which the employer is subject.

If an employer conducts random testing through a consortium, the number of tests to be conducted may be calculated for each individual employer (if the employer has its own pool), each DOT agency (if the consortium has established agency-specific pools), or may be based on the total number of covered employees subject to random testing (if the consortium has one pool).

COVERAGE CLARIFICATION Simulator Instructors

Ground instructor duties were not included as a covered safety-sensitive function under the FAA's alcohol misuse prevention program final rule and were eliminated from the covered safety-sensitive functions included in the FAA's antidrug rule effective September 19, 1994. However, flight instructor duties related to part 121 and 135 certificate holders as part of required training programs are considered safety-sensitive functions under both rules. The FAA considers simulator instruction, which substitutes for in-aircraft instruction, to be flight instruction. Therefore, personnel who provide simulator instruction, directly or by contract, to part 121 and 135 certificate holders as part of required training programs must be subject to the testing and other requirements of the antidrug and alcohol misuse prevention rules.

Ground Security Coordinator/ Aviation Screener

The August 19, 1994, rule amendment modified the classes of covered safety-sensitive functions to parallel the classes in the alcohol misuse prevention rule. This included separating the aviation screening and ground security coordinator (GSC) duties. Based on a review of the 1994 Drug Testing MIS Data Collection Forms, there appears to be confusion regarding employees covered under these categories.

A GSC is an individual designated and trained by a part 121 or 135 certificate holder to carry out the GSC duties specified in the certificate holder's FAA-approved security program required under part 108. The GSC oversees the procedures, facilities, and equipment used to perform screening of passengers and property at airports. The

GSC also conducts annual evaluations of persons assigned to perform screening duties and makes determinations regarding continued employment of those persons.

Airport security police duties, as such, are *not* considered to be a GSC duty and are not considered to be a covered function.

Aviation screening duties include the inspection of persons and their accessible property entering a sterile area at each preboarding screening checkpoint in the U.S. for which the certificate holder is responsible. These duties also include screening of checked baggage prior to being loaded onto departing aircraft.

REPAIR STATIONS & MAINTENANCE CONTRACTORS

The FAA antidrug regulation requires that individuals who perform maintenance and preventive maintenance under contract to part 121 or 135 certificate holders be included in an FAA-approved antidrug program.

The Drug Abatement Division has approved several thousand antidrug programs for repair stations and maintenance contractors since 1990. The majority of these companies are in fact performing aircraft or component maintenance for part 121's and/or 135's. However, we are finding during program inspections that there are companies, or individuals, who, even though they have approved antidrug programs, have not performed work for part 121's or 135's. They have elected to keep an antidrug plan in the event they will be required or requested to do safety-sensitive work for such certificate holders.

This situation presents some difficulties. Unless a contractor requests the Drug Abatement Division to place its approved plan in abeyance until it performs work for part 121's or 135's, the FAA's records will indicate that contractor as having an active program and it should be testing employees who perform safety-sensitive functions defined in Appendix I to part 121. However, absent any work being performed for a certificate holder, the contractor will not have any employees who are actually subject to the rule. To avoid this conflict, and to ensure the FAA does not schedule such contractors for inspections, any contractor without current or routinely recurring contracts with covered employers should ask the FAA to place its plan in abeyance. The plan can be reactivated, and required testing reinstituted, when the contractor notifies the Drug Abatement Division of status changes.

CONSORTIA MAY NOT WITHHOLD INFORMATION FROM EMPLOYERS

The FAA experienced an instance where a consortium withheld records needed by the employer undergoing an FAA antidrug program inspection because of nonpayment of fees by the employer. Information that is maintained by consortia must be provided to member companies when requested. Such information includes names of employees in the random pool, random selection lists, and copies of notices sent to employers of selected employees. Financial/contractual agreements are separate from compliance with the FAA regulatory requirements. Consortia are obligated to release program records when they have been requested from the employer by the FAA.

LABORATORY WITHDRAWALS

The following drug testing laboratories have recently withdrawn from the National Laboratory Certification Program and are no longer DHHS-certified.

Occupational Toxicology Laboratories, Inc.

2002 20th Street, Suite 204A

Kenner, LA 70062

WITHDREW - February 1, 1995

National Drug Assessment Corporation

5419 South Western

Oklahoma City, OK 73109

WITHDREW - December 14, 1994

Allied Clinical Laboratories

201 Plaza Blvd.

Hurst, TX 76053

WITHDREW - November 28, 1994

St. Louis University Forensic Toxicology Laboratory

1205 Carr Lane

St. Louis, MO 63104

WITHDREW - October 31, 1994

Bioran Medical Laboratory

415 Massachusetts Ave.

Cambridge, MA 02139

WITHDREW - October 22, 1994

Dept. of the Navy, Navy Drug Screening Laboratory Norfolk, VA

1321 Gilbert St.

Norfolk, VA 23511-2597

WITHDREW - October 14, 1994

CPF MetPath Laboratories

21007 Southgate Park Blvd.

Cleveland, OH 44137-3054

WITHDREW - September 27, 1994

Medical Science Laboratories

11020 W. Plank Court

Wauwatosa, WI 53226

WITHDREW - September 16, 1994

National Health Laboratories Inc.
5601 Oberlin Dr., Suite 100
San Diego, CA 921221
WITHDREW - August 12, 1994

QUESTIONS AND ANSWERS

Q: What keeps an employee from moving on to another aviation company after engaging in conduct while working for a different employer for which he/she should be permanently prohibited from performing his/her function?

A: The rule states that an employee who has verified positive drug test results on two drug tests required by appendix I to 14 CFR part 121 and conducted after September 19, 1994, is permanently precluded from performing for an employer, the safety-sensitive duties the employee performed prior to the second drug test. By using "an employer" rather than "that employer" or "the current employer," the rule precludes a permanently barred individual from performing the safety-sensitive function for any covered employer. The preamble to the August 19 rule amendment makes clear that it is incumbent on employers to ensure applicants are not subject to a permanent prohibition from service, or otherwise not qualified to perform safety-sensitive functions (e.g., if the employee has failed to complete required rehabilitation after a positive test). In addition, the rule amendment provides that employers are required to release antidrug program records upon written consent of an employee, thereby precluding prior employers from refusing to release records.

Q: Our company policy is to fire employees who have two positive drug tests. If an employee had a verified positive drug test result prior to September 19, 1994, and

another verified positive drug test result after September 19, is the employer required to start with a clean slate on September 19 or can we fire him/her under our company policy? Does the regulation prevent an employer from terminating an employee after only one positive drug test result?

A: The permanent bar does not affect an employer's company policy regarding employment status at all. In fact, with the exception of the regulatory requirements regarding the performance of safety-sensitive functions, employment decisions are completely up to the discretion of the employer. Therefore, although tests conducted before September 19, 1994, do not count toward the permanent bar, they certainly can be considered by employers making termination decisions.

Q: On a random test, the laboratory advised the MRO that the specimen had tested positive for a prohibited drug. In addition, the laboratory confirmed the presence of an adulterant. Should this test be considered as both a positive and an adulteration (i.e., a refusal)?

A: No. A refusal occurs only when an individual either improperly fails to provide a urine specimen or engages in conduct that clearly obstructs the testing process. Although, in this case the employee attempted to obstruct the testing process, in fact an analytically sound (positive) result was achieved. Therefore, it is only a positive test.

Q: I am an employer with two covered employees who work approximately 2 days a week in Canada and 3 days a week in the U.S. I select employees for random drug testing once a quarter. Must I include these employees in my random testing pool?

A: The FAA expects that employers will ensure that persons such as your employees,

who are performing safety-sensitive functions partially within the territory of the United States remain subject to an effective random testing program. Employees performing such functions partially within the territory of the United States should remain in the random testing pool and should not be routinely excused from testing simply because they are not within the

territory of the United States when they are selected for testing. Rather, you should hold the name of any such employee (which may be done up until the time of the next random selection) and ensure that the employee is tested when the employee is within the territory of the United States.

Alcohol misuse prevention PROGRAM

PRE-EMPLOYMENT ALCOHOL TESTING SUSPENDED

Effective May 10, 1995, pre-employment alcohol testing under the Federal Aviation Administration, Federal Highway Administration, Federal Rail Administration, and Federal Transit Administration rules is suspended. A final rule to this effect was published by the Office of the Secretary of Transportation in the Federal Register on May 10, 1995.

The decision to suspend this testing follows the decision on April 5, 1995, under which pre-employment alcohol testing under the Federal Highway Administration's rule was vacated by the U.S. Court of Appeals for the Fourth Circuit. The Court remanded the issue to the Department of Transportation for further consideration of what, if any, pre-employment alcohol testing is required by the Omnibus Transportation Employee Testing Act of 1991.

Aviation employers who wish to conduct pre-employment alcohol testing may do so under their own authority. However, until further notice, companies may not claim a basis in Federal law or regulation for pre-employment alcohol testing.

USE OF NON-EVIDENTIAL SCREENING DEVICES PERMITTED

On April 20, the DOT published a final rule permitting the use on non-evidential breath and saliva devices to conduct alcohol screening tests. Only devices appearing on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List of Screening Devices to Measure Alcohol in Bodily Fluids may be used. Employers were permitted to begin testing using such devices on May 22. A summary of the rule permitting, and the procedures for the use of non-evidential devices, is attached to this newsletter.

AMPP GUIDANCE MATERIALS AVAILABLE

The National Technical Information Service (NTIS) is offering a videotape package on the Federal Aviation Administration's (FAA) Alcohol Misuse Prevention Program. The videotape, featuring Julie Murdoch of the FAA's Drug Abatement Division, was prepared by the FAA as part of implementation

guidance for the aviation industry. This plain language explanation of the rule will assist aviation employers and employees in understanding the Federal regulations regarding alcohol misuse and breath alcohol testing. The package contains, in addition to the 2-hour video, copies of the outline used for the presentation, copies of a sample employer policy, and frequently asked questions and answers accompanied by alcohol rule language. This package, entitled Overview of Alcohol Misuse Prevention Program for the Aviation Industry (Order #AVA19706VNB1), is available from NTIS for \$95.95. The video only may be purchased for \$54 (Order #AVA19707VNB1). The written materials only may be purchased for \$54 (Order #AVA19708BB00). To place an order, phone (703) 487-4650 or telefax your order to (703) 321-8547.

FAA CONSIDERING ALCOHOL CONFERENCES

The FAA Drug Abatement Division is considering conducting a limited number of conferences in select locations to assist the aviation industry in the implementation of their alcohol misuse prevention programs (AMPP) (information on the antidrug rule could also be provided). We are asking aviation employers for their input as to whether they think these conferences would fulfill a need, and, if so, would they be willing to pay a registration fee to defray expenses. If registration fees were required, what would potential attendees be willing to pay? In addition, we are soliciting your input as to what other implementation assistance you would like to see.

Please fill out the form at the end of this newsletter and return it to:
FAA Drug Abatement Division, AAM-800
400 7th Street SW.
Washington, D.C., 20590.

RANDOM SELECTIONS PRORATED FOR EMPLOYERS REQUIRED TO IMPLEMENT THEIR AMPP ON JULY 1

Employers required to implement their AMPPs on July 1 may prorate their random selections in accordance with the following formula:

Number of covered employees times the required random rate for the calendar year (25 percent for 1995) divided by the number of selections the employer intends to make each year. This formula provides the number of employees that should be randomly tested as a result of each selection ($100 \text{ covered employees} \times 0.25 \div 4 = 6.25$; therefore, 7 covered employees should be tested per selection).

The employer should then proceed with the selections for the remainder of the calendar year. The FAA requires that employers make random selections no less frequently than once per calendar quarter and that at least one selection be made for the calendar year in which an employer implements its antidrug plan or alcohol misuse prevention program.

ALCOHOL DEFINED

On December 15, 1992, the Department of Transportation (DOT) published in the Federal Register (57 FR 59428) a notice of proposed rulemaking (NPRM) to establish alcohol testing procedures for the transportation workplace. In the NPRM,

alcohol was defined as "ethyl alcohol (ethanol)," which is the alcohol found in alcoholic beverages. This proposed definition was the subject of several comments which supported changing the definition to include methanol, isopropanol and other alcohols. The rationale for the comments recommending a change in the definition of alcohol was primarily that expanding the definition could help to avoid challenges that a positive test result came from the ingestion of an alcohol other than ethanol. Since a person could ingest small quantities of non-ethyl alcohols while remaining conscious, and since most testing devices do not distinguish ethanol from other types of alcohol, it could be difficult to refute such a claim.

After considering all of the comments on this issue, DOT decided to change the definition of alcohol in its alcohol testing procedures final rule (40 CFR part 40; published February 15, 1994) to include not only ethyl alcohol, but also the other low molecular weight alcohols: methyl, isopropyl, and normal propyl alcohol. The last can be purchased through chemical supply houses, but is not readily available to the general public. While methyl alcohol and isopropyl alcohol are occasionally abused, small quantities of these substances will make a person very sick. For instance, two to eight ounces of methanol is considered toxic and may be fatal. These alcohols are extremely unlikely to be found in the breath of alcohol-impaired individuals except perhaps at very low concentrations in rare cases. When present, the person would be expected to be as impaired as he/she would be with ethanol, except that the other alcohols are much more toxic. As with ethanol, it would be unsafe to perform safety-sensitive functions when impaired by these other alcohols. A test result indicating the presence of such

alcohols would necessitate removal of the employee from safety-sensitive duties.

Even though alcohols other than ethanol are included in the rule, employers should not be concerned about the possibility of devices picking up fumes or other environmental alcohol. All evidential breath testing devices that are approved by the National Highway Traffic Safety Administration for use in conjunction with the FAA alcohol testing program are active in nature (*i.e.*, they require an individual to blow into the device) as opposed to passive sensors which detect alcohol in the environment. Therefore, there should be no false-positive readings from vapors present in the air.

RULEMAKING DOCUMENTS PUBLISHED

Technical Amendment
(10/21/94) to the Alcohol
Misuse Prevention Program
Final Rule

Corrects typographical errors and clarifies provisions to reflect the FAA's actual intent.

Final Rule (12/2/94)

- ***Blood Testing***

The DOT has decided not to authorize blood testing for alcohol in post-accident and reasonable suspicion situations, when evidential breath testing devices are not available. There are many problems with establishing a program for blood testing, including concerns about invasiveness and added procedural complexity.

- ***Reporting "Missed Tests"***

For the 3-year period beginning January 1,

1995, employers required to submit MIS reports to the FAA must also report reasonable suspicion and post-accident tests that were not conducted because more than 8 hours had passed since the triggering event. The report should contain the following items.

Type of test - reasonable suspicion or post-accident.

Triggering event - date, time, and location of accident or supervisor's decision of reasonable suspicion.

Employee category - flight crewmember, flight attendant, flight instructor, aircraft dispatcher, maintenance/preventive maintenance, ground security coordinator, aviation screening, and air traffic controller.

Explanation - Indicate why the test could not be conducted within 8 hours.

Possible use of blood testing - if blood testing would have been available to complete the test within 8 hours, provide the name, address, and telephone number of the testing site at which blood testing could have occurred.

Employers are not required to report tests that are conducted more than 2 but less than 8 hours after the triggering event.

If a post-accident or reasonable suspicion test is not administered within 2 hours following the occurrence of the accident/determination to test, the employer must prepare and maintain on file a record stating why the test was not administered promptly.

SAMPLE EMPLOYER ALCOHOL POLICY AVAILABLE

The FAA's alcohol misuse prevention program (AMPP) requires that each employer must ensure that a copy of the employer's policy is distributed to each covered employee prior to the start of alcohol testing under the employer's FAA-mandated AMPP and to each person subsequently hired for or transferred to a covered position. Each employer also must provide written notice to representatives of employee organizations of the availability of such information. To assist employers, the Drug Abatement Division has developed a sample employer policy to demonstrate how alcohol misuse information could be conveyed to employees who will be covered under this rule. **Updated copies of this sample are available from the National Technical Information Service.** (See page 7)

OOPS!!! CORRECTION TO EARLY EDITION OF EMPLOYER POLICY

The sample employer policy that was distributed in October had a typographical error in it. In the section on **Confirmation Tests**, the second paragraph discusses "air blanks." The first three sentences of this paragraph discuss the necessity of the air blank registering 0.00. The fourth sentence inadvertently refers to a reading of greater than 0.02; this figure should also be 0.00. The fourth sentence should read: "If the reading is greater than 0.00, testing will not proceed using that instrument."

QUESTIONS AND ANSWERS

Q: Since the pre-employment and return to duty tests are voluntary tests, an applicant or employee can refuse either type of test without consequence under the rules.

However, if the individual actually takes and fails a pre-employment or return to duty **drug** or a return to duty **alcohol** test, should an employer count the test result toward the permanent bar?

A: If an individual refuses a pre-employment or return to duty test, the only consequences would be that the individual cannot perform safety-sensitive functions. This, in effect, upholds the purpose of the rules.

An individual who has a verified positive pre-employment or return to duty **drug** test has engaged in illegal use of drugs, and under the language of the Omnibus Transportation Employee Testing Act of 1991 (the Act), such conduct must be counted toward the permanent bar.

An individual who has a positive return to duty **alcohol** test result has not engaged in the impermissible use of alcohol because the individual was not performing safety-sensitive functions at the time of the test. Therefore, the positive alcohol test would not be counted toward the permanent bar.

Q: Since refusing a required alcohol test is prohibited behavior under the alcohol rules, should an employer count such a refusal toward the permanent bar? How would this apply under the drug rules which do not specifically prohibit refusing to take a test?

A: Refusing to submit to a drug or alcohol test is not illegal drug use or misuse of alcohol. Therefore, refusals do not count toward the permanent bar.

Q: If an employee has had a positive drug or alcohol test by a prior employer, would another positive test by the current employer trigger the permanent bar?

A: Yes, as long as both positive drug tests occurred after September 19, 1994, when the amendment to the antidrug rule became effective, or both alcohol tests were administered under the FAA's rule after the implementation dates for the specific companies that conducted the testing.

In any case other than on-duty drug or alcohol use, which is cause for invoking the permanent bar for a single incident, two verified positive drug tests or two violations of the prohibitions on alcohol use are required to invoke the permanent bar. One verified positive drug test and one prohibited alcohol use would not invoke the permanent bar. Because the Act primarily addresses individuals who engage in the same type of conduct, even after evaluation and treatment, the individual must engage in two drug or two alcohol violations to be permanently barred from the safety-sensitive function that he or she performed prior to the violations.

Q: Should management flight attendants, who do not regularly perform safety-sensitive functions and who may be called into service only on an emergency basis, be included in the random alcohol testing pool? Currently, these employees are in the random drug testing pool. If kept out of the random alcohol pool, should they also be removed from the random drug pool?

A: The FAA's AMPP defines "performing" a safety-sensitive function as "actually performing, ready to perform, or immediately available to perform such functions." If the management flight attendants would be immediately available to perform the flight attendant functions in the case of an emergency, they should be included in the random alcohol testing pool. For the same reason, these employees should also remain in the random drug testing pool.

If the flight attendants are not in a status where they are immediately available to perform, they should not be included in the

random drug or alcohol testing pools until they enter that status.

BRIEFLY . . .

NO ORIGINALS WHEN REPORTING PART 67 POSITIVES

Medical review officers are reminded that when reporting positive drug test results to the Federal Air Surgeon that original documents should NOT be submitted. The original copies of the custody and control forms from the laboratories (and collectors) should be retained by the MRO to ensure that his/her records are complete and contain original signatures. Employers reporting alcohol violations should simply submit any copies of supporting documents.

COVERED EMPLOYEE AMENDMENTS

When submitting amendments revising the number of employees covered under an employer's antidrug program, the amendment should state the effective date of the change.

REPORTING REFUSALS TO SUBMIT TO TESTING

Employers reporting instances in which a 14 CFR part 61, part 63, or part 65 airman certificate holder refused to submit to a required drug or alcohol test should send the notification to:

FAA
Aviation Standards National Field Office
Airman Certification Branch (AVN-460)
P.O. Box 25082
Oklahoma City, OK 73125

Notification should not be sent to the Drug Abatement Division.

See related article in the September 1994 Update.

ALCOHOL MISINFORMATION

This is a reminder that there is much misinformation being given out about the alcohol rules. Employers should not rely solely on commercial publications, but should read the actual regulations. If questions arise, then the FAA should be contacted.

FORM ORDER INFORMATION

The Breath Alcohol Testing Form and the Federal Drug Testing Custody and Control Form may be ordered from the Government Printing Office by phoning (202) 512-1800 or writing the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

DOT Breath Alcohol Testing Form

Stock Number: 050-000-00556-9

Cost: \$19 per package of 50 forms

Federal Drug Testing Custody and Control Form

Stock Number: 050-000-00558-5

Cost: \$34 per package of 50 forms

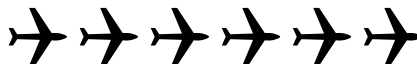
The date for mandatory use of the Federal Drug Testing Custody and Control Form is June 1, 1995.

CONFORMING PRODUCTS LISTS PUBLISHED

An amended Conforming Products List for instruments that conform to the Model Specifications for Evidential Breath Testing Devices was published in the Federal Register on March 16. The Conforming Products List of devices that conform to the Model Specifications for Screening Devices was published in the Federal Register on

December 2, 1994, and an amendment published on December 16, 1994. For further information contact:

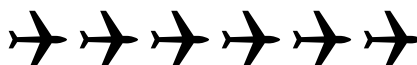
NHTSA
Office of Alcohol and State Programs
(NTS-21)
400 7th Street, SW
Washington, DC 20590



Published by:

FAA/Drug Abatement Division (AAM-800)
400 7th Street, SW
Washington, DC 20590

Comments or suggestions should be sent to the above address.



FINAL RULE
49 CFR Part 40 - Federal Register, 4/20/95

Procedures for Non-Evidential Alcohol Screening Devices and
Amendments to Procedures for Use of EBT Devices

Effective Date: May 22, 1995

Devices

The National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) identifies four non-evidential breath alcohol testing devices and one saliva alcohol testing device that have been approved for use in alcohol screening tests. This final rule establishes procedures for the use of non-evidential screening devices listed on NHTSA's CPL.

Some of the other changes in this final rule are:

Log Books

The use of all log books (for evidential breath testing devices (EBT) that do not have printing capabilities and for the newly adopted non-evidential screening devices) has been eliminated.

Screening Test Technicians

This final rule establishes a screening test technician (STT) who can be trained to conduct only alcohol tests using screening devices. Breath alcohol technicians (BAT) may also act as STTs and conduct these types of tests if they are proficient on the device being used (a brief version of the BAT training for STTs has been prepared by the Department of Transportation [DOT]).

All STTs must be able to discern colors in reference to changes, contrasts, or readings on the screening devices.

Warning Requirement

An employee who has a screen test of 0.02 or greater must be advised that he or she must not drive, perform safety-sensitive duties, or operate heavy equipment. The employee must remain under observation of a BAT, STT, or other employer personnel while in transit from the screening test site to the confirmation test site.

Maximum Waiting Period

The maximum waiting period between screening and confirmation tests has been extended from 20 minutes to 30 minutes for all tests, whether the tests are conducted using EBTs only, or are conducted using screening devices and EBTs.

***Note:** The minimum waiting period between screening and confirmation tests has not changed and remains **15** minutes.

Quality Assurance Plans

Quality assurance plans (QAP) are required for screening devices. They are to be developed by the manufacturer and approved by NHTSA. They are to contain:

- methods for quality control checks.
- temperatures for storage and use.
- other environmental conditions that may affect performance.
- shelf life of the device, where relevant.

Forms

The existing breath alcohol testing form (form) shall be used for now. DOT intends to revise the existing form in the near future, but employers will be allowed to exhaust stocks of existing forms before being required to use the new form.

Refusals to Test and Uncompleted Tests

- The testing process shall be terminated and the STT shall immediately notify the employer if an employee:
 - refuses to complete and sign the form.
 - refuses to provide a breath or saliva sample.
 - refuses to provide an adequate amount of breath.
 - refuses to cooperate in a way that prevents the completion of the testing process.
- If the screening test cannot be completed, for reasons other than a refusal, or if an event occurs that would invalidate the test, the STT shall, if practicable, begin a new test, using a new form and, in the case of a test using a saliva screening test, a new device.

Inability to Provide Adequate Breath or Saliva

- With a non-evidential breath testing device, procedures are the same as with an EBT.
- With a saliva screening device:
 - STT shall conduct a new test using a new device.

- If the employee refuses to complete the new test, the STT terminates testing and informs employer (this is a refusal to test).
- If the new test is completed, but there is insufficient saliva to activate the device:
 - STT informs employer immediately.
 - Employer immediately administers an alcohol test using an EBT.

Invalid Tests

An alcohol test shall be invalid if:

- Saliva screening device:
 - result read before 2 minutes or after 15 minutes from the time the swab is inserted into the device.
 - device does not activate.
 - device is used after the expiration date.
 - STT fails to note in remarks section of the form that the test was conducted using a saliva screening device.
- Non-evidential breath testing device:
 - STT fails to note in the remarks section of the form that the employee has failed or refused to sign the form following the recording of the test result.

Screening Test Procedures

- Non-evidential breath testing device:
 - Procedures will remain the same as with an EBT.
- Saliva testing device:
 - See final rule for the 10-step procedure.

CONFERENCE SURVEY

Federal Aviation Administration
Drug Abatement Division, AAM-800
400 7th Street SW
Washington, DC 20590
202 366-7911 (fax)

I would attend an implementation assistance conference for FAA-mandated substance abuse prevention programs if it were held in my region.

Yes

No

I have previously attended a conference on the alcohol rule.

Yes

No

I have previously attended a conference on the antidrug rule.

Yes

No

I would be willing to pay a registration fee for this conference attendance.

Yes

No

I believe a fee of \$_____ would be reasonable for conference attendance (do not include your travel or per diem expenses).

I would also like to see the following assistance from the FAA in implementing my alcohol misuse prevention program.

PLEASE COMPLETE!